

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

KIMBERLY A. DISANTO,

Plaintiff,

v.

GENOVA PRODUCTS, INC.,

Defendant.

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CAUSE NO. 1:10-cv-120

OPINION AND ORDER

On January 7, 2011, the Plaintiff filed a motion to amend her complaint to add Fox Contractors Corporation as a defendant. (Docket # 24.) On January 10, 2011, the Court denied the Motion without prejudice, noting that amendment would be futile because the proposed Amended Complaint did not adequately establish this Court's diversity jurisdiction. *See Vogt v. Raymond James Financial Serv., Inc.*, No. 09-cv-83, 2009 WL 2602621, at *1 (E.D. Wis. Aug. 20, 2009) ("[A]mendment is . . . clearly futile when the court would not have jurisdiction over the amended complaint.").

The Plaintiff has since re-filed her Motion to Amend and offered a new proposed Amended Complaint. (Docket # 27.) Although the Plaintiff has corrected many of the prior jurisdictional failings, the Motion to Amend must once again be denied as futile. The new proposed Amended Complaint states that: "Fox Contractors Corp. is and at all relevant times has been an Indiana corporation incorporated within the State of Indiana and doing business in Fort Wayne . . . Indiana." (Proposed Am. Compl. ¶ 3.)

This allegation is inadequate to support this Court's diversity jurisdiction, because corporations "are deemed to be citizens of the state in which they are incorporated *and* of the

state in which they have their *principal place of business*.” *N. Trust Co. v. Bunge Corp.*, 899 F.2d 591, 594 (7th Cir. 1990) (emphasis added); *see* 28 U.S.C. § 1332(c)(1). Accordingly, it remains futile to grant the motion to amend. *See Vogt*, 2009 WL 2602621, at *1; *McNeal v. Parson*, No. 3:06-cv-306, 2006 WL 2038588, at *1-2 (N.D. Ind. July 19, 2006).

The Plaintiff’s second motion for leave to file an amended complaint (Docket # 27) is therefore DENIED WITHOUT PREJUDICE. The Plaintiff may re-file her motion, although if the third proposed Amended Complaint remains jurisdictionally deficient, any future denials may be with prejudice.

SO ORDERED.

Enter for January 14, 2011.

S/ Roger B. Cosbey
Roger B. Cosbey,
United States Magistrate Judge